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becoming executor. This evidence then merely proves circumstances which may or may not impose an equitable liability on the executor's estate and would therefore seem admissible. The decision in a recent English case, that the appointment of the debtor as executor after an ineffective release *inter vivos* extinguishes the debt, seems therefore sound. *In re Pink*, [1912] 2 Ch. 528.¹¹

THE DOMICILE OF A WIFE. — At common law, a husband and wife were considered as a single legal unit. Being but one unit they had but one domicile, which was that of the husband.¹ In the main this theory persists to-day, but certain modifications of the rule have been made in connection with divorce. Since only the domiciliary sovereign can dissolve a marriage,² a wife at common law would be required to sue for a divorce at her husband's domicile, no matter to what place he may have removed it.³ As a relief from this manifest injustice, the wife is allowed to have a separate domicile for the purpose of securing a divorce. The rule which prevails in most American jurisdictions is that the wife may establish a separate domicile for this purpose wherever she resides *animo manendi*, providing she has a good cause for divorce.⁴ A few courts hold that this separate domicile can only be established in the same jurisdiction as the last matrimonial domicile.⁵ On the other hand, English courts have adhered more closely to the common-law rule and have required the wife to sue for divorce at her husband's domicile,⁶ but they allow her to sue at the last matrimonial domicile when the husband left it in order to deprive her of this right, on the theory that the husband's act is a fraud on the wife and that he cannot be allowed to take advantage of his own wrong.⁷

The idea that the wife's domicile may depend on acts of the husband having no connection with the cause of divorce is extended even further in a recent English case. A marriage occurred in England between an Englishwoman and a domiciled Greek, but no matrimonial domicile was established anywhere. The marriage was annulled in Greece on the ground

¹¹ *Strong v. Bird*, *supra*; *In re Applebee*, *supra*; *In re Griffen*, *supra*. *Contra*, *In re Hyslop*, *supra*. By statute and decision in many American jurisdictions the debt is not extinguished at law, by the appointment of the debtor as executor. It would still be a legal asset, therefore, and parol evidence could not be brought in to affect its disposition. See WOERNER, AMERICAN LAW OF ADMINISTRATION, § 311; 2 WILLIAMS, EXECUTORS, 6 Am. ed., 1488 *et seq.*

¹ See 1 BL. COMM. 442.

² *Wilson v. Wilson*, 2 P. D. 435; *State v. Armington*, 25 Minn. 29; *People v. Dawell*, 25 Mich. 247.

³ See WHARTON, CONFLICT OF LAWS, 3 ed., § 224.

⁴ *Ditson v. Ditson*, 4 R. I. 87; *Chapman v. Chapman*, 129 Ill. 386, 21 N. E. 806; *Smith v. Smith*, 43 La. Ann. 1140, 10 So. 248.

⁵ See *Burtis v. Burtis*, 161 Mass. 508, 37 N. E. 740, 741; *Haddock v. Haddock*, 201 U. S. 562, 570, 26 Sup. Ct. 525, 527. This rule is followed in European countries. See WHARTON, CONFLICT OF LAWS, 3 ed., 445, n. 2.

⁶ *Le Mesurier v. Le Mesurier*, [1895] A. C. 517; *Tollemache v. Tollemache*, 1 Sw. & Tr. 577; *Wilson v. Wilson*, L. R. 2 P. D. 435.

⁷ See *Deck v. Deck*, 2 Sw. & Tr. 90. This rule seems to confer only a right to sue at the last matrimonial domicile. *Le Sueur v. Le Sueur*, 1 P. D. 139.

that no Greek priest had been present at the ceremony. The wife, having returned to England, sued for a divorce, and the court assumed jurisdiction on the ground that, since the husband had taken an adverse advantage of his domicile, the wife reverted to her domicile of origin.⁸ *Stathatos v. Stathatos*, 57 Sol. J. 114, 29 T. L. R. 54 (Eng., P. D., Nov., 1912). Although it is difficult to see how the husband took an adverse advantage of his domicile when he merely obeyed the law of his sovereign, the result would be easily reached by the sounder theory of the American courts. Theoretically, the right of a wife to obtain a separate domicile should depend upon her living in a place *animo manendi* and her legal capacity to acquire a different domicile from her husband's. It is submitted that she has such a capacity when she is not under a legal duty to live with him, and she is relieved from this duty when she has a good cause for divorce. It would seem that a court must primarily decide whether or not she has a good cause for divorce.⁹ Therefore the husband's actions should only affect the question of the wife's domicile if they in themselves supply cause for a divorce.

Although she have cause for divorce, a wife's right to have a separate domicile is not absolute. It has been held that if she unreasonably delays in suing for divorce her right of action is destroyed, so that her separate domicile seems conditioned upon her petitioning for divorce within a reasonable time.¹⁰ Moreover, it is doubtful if she can have this separate domicile for any purpose other than divorce. In no other case do strong practical considerations exist as in the case of divorce, which would justify a departure from the historical rule that every incident of the marriage continues as long as the status itself. It does not seem unreasonable to make other rights depend on the termination of that status.¹¹

⁸ The suggestion that the wife's domicile of origin revived might lead to most undesirable results, as for instance if her domicile happened to be in Australia. It may be doubted whether the court uses the expression "domicile of origin" in its literal sense, or merely means the domicile which the wife had immediately preceding the marriage. The court relies upon a *dictum* in *Ogden v. Ogden*, in which Sir Gorrell Barnes uses the expression "original domicile," and the context seems to indicate that he meant the domicile preceding marriage. See *Ogden v. Ogden*, [1908] P. D. 46, 82.

⁹ *Suter v. Suter*, 72 Miss. 345, 16 So. 673. See *Cheely v. Clayton*, 110 U. S. 701, 705, 4 Sup. Ct. 328, 330; *Hood v. Hood*, 11 Allen (Mass.) 196, 199; *Lbker v. Gerald*, 157 Mass. 42, 45, 31 N. E. 709, 710. The result of these cases seems to make the fact as to whether or not the wife has a good cause of divorce a jurisdictional question. *Contra*, *Johnson v. Johnson*, 57 Kan. 343, 46 Pac. 700. However, it is only when the decision of one court is attacked in another jurisdiction that this question would be squarely in issue.

¹⁰ *Beauclerk v. Beauclerk*, [1891] P. D. 189; *Smith v. Smith*, 43 N. H. 234; *Barker v. Barker*, 63 N. J. Eq. 593, 53 Atl. 4.

¹¹ *Re Wickes*, 128 Cal. 270, 60 Pac. 867. But most of the few decisions upon this point are contrary to the view here expressed, two of three cases holding that a wife's will may be probated in her separate domicile, and another deciding that this gives her such diversity of citizenship as to entitle her to sue in the federal courts. *Shute v. Sargent*, 67 N. H. 305; *Matter of Florance*, 54 Hun (N. Y.) 328; *Watertown v. Greaves*, 112 Fed. 183. The reasoning of these cases, it is submitted, is unsound.